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From: "Johnston, Carl" <CJohnston@osmre.gov>
To: Betsy Herrmann <betsy_herrmann@fws.gov>, "Harber, Dale" <dharber@fs.fed....
Date: 10/9/2009 10:32 AM
Subject: Mining Plan Determination - Emery Deep
Attachments: Emery.lba.doc

Attached is OSM's final decision regarding the need for a Mining Plan Modification for the above subject. A signed copy will be sent to you in today's mail.

In accordance with the Federal regulations under 30 CFR 740.13(d), other Federal agencies that may have an interest in, or jurisdiction over, the above subject operation have also been notified of OSM's decision electronically.

No response to this transmittal is necessary.

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October 9, 2009

Utah Division of Oil, Gas, & Mining
Coal Regulatory Program
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

RE: Consolidation Coal Company - "Emery Deep" Mine - Application for a Permit Revision,
Zero Zero North LBA, Task No. 3405

Dear Sir or Madam:

This is in response to the Utah Division of Oil, Gas & Mining's (UT-DOGM) September 22, 2009, request for a decision, under 30 CFR 944.30, whether the above subject permit revision constitutes a mining plan modification.

Mining plan approvals by the Secretary of the Interior are required under the Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.* before coal mining can occur on Federal lands. This letter serves to document OSM's determination whether or not a mining plan approval from the Secretary is required for the above permitting action.

OSM's review of the Application for a Permit Revision, Zero Zero North LBA, has determined that it to recover Federal coal from approximately 120 acres that otherwise would be by-passed in new Federal lease UTU-86038 at the Emery Deep mine, Utah State permit C/015/0015.

Based on a review of the activities associated with the permit revision, OSM has determined that the proposal does meet the requirements of 30 CFR 746.18(d)(3) and 746.18(d)(4). Therefore, the proposed Zero Zero North LBA permit revision does constitute a mining plan action requiring Secretarial approval.

OSM's decision was based solely upon the Federal regulations under 30 CFR PART 746 and not the technical aspects of the revision application itself. Consequently, OSM's decision does not relieve UT-DOGM from coordinating the review and approval of the Application for a Permit Revision, Zero Zero North LBA, with other Federal agencies for compliance with other Federal regulations.

OSM also electronically transmitted the September 22, 2009, request to the Bureau of Land Management and the USDA Forest Service for their review and comment.

In an voice mail of October 9, 2009, the USDA Forest Service stated it had no comments or concerns with the permit revision application.

In an electronic submittal dated October 5, 2009, the Bureau of Land Management stated the permit revision does constitute a mining plan action requiring Secretarial approval.

Please notify the applicant of our decision on this matter.

Should you have any questions regarding this letter or approval, please contact Carl R. Johnston, Utah Federal Lands coordinator, at (303) 293-5038.

Sincerely,

Foster Kirby, Acting
Manager, Field Operations Branch

cc: BLM - Utah State Office
BLM - Price Field Office
USFS - Manti-La Sal NF
Denver Field Division